In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-792

HIATT GRAIN & FEED, INC., on Behalf of Itself and All Others Similarly Situated,
Petitioner,

vs.

HON. BOB BERGLAND, Secretary of Agriculture, United States of America,
Respondent,

RALPH BALL, et al.,
Intervenors.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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Intervenors.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner, Hiatt Grain & Feed, Inc., on behalf of itself and all others similarly situated, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit in this case.

OPINIONS BELOW

The opinion of the Court of Appeals was filed on July 16, 1979, but is not yet reported. It is reprinted

in the Appendix at pages A1-A10, *infra*.[1] The opinion of the United States District Court for the District of Kansas is reported at 446 F.Supp. 457.

JURISDICTION

The judgment of the Court of Appeals was entered on July 16, 1979. A timely petition for rehearing or, in the alternative, for a rehearing by the Court en banc was denied on August 23, 1979. This petition is filed within ninety days of the entry of that judgment. The Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

1. Did the Secretary of Agriculture possess the statutory authority to promulgate regulations on July 16, 1977, and August 9, 1977, permitting the Commodity Credit Corporation to make price support loans directly to cooperative marketing associations, as distinguished from farmer-producers, on wheat and feed grains when the wheat and feed grains were not produced by the cooperatives, which are entities separate from their members and separate from the farmer-producers from whom they acquired ownership of the wheat and feed grains?

2. Even assuming the Secretary may make such price support loans to cooperatives, which petitioner denies, does the Secretary have statutory authority to make such loans

1. The Appendix to this petition consists of 27 pages and contains the Tenth Circuit's opinion, pertinent statutes, and excerpts from the challenged regulations. An extensive Joint Appendix was filed in the Tenth Circuit; it is cited "Joint App." in this petition. The Record before the District Court is referred to herein by reference to the volume number (in Roman numerals) and page number (in Arabic numerals).

through Commodity Credit Corporation on a nonrecourse basis?

3. How and on what basis the conflict between the opinion of the Tenth Circuit Court of Appeals in this case, permitting nonrecourse loans to cooperatives, and the opinion of the Sixth Circuit Court of Appeals in *Tennessee Burley Tobacco Growers' Ass'n v. Commodity Credit Corp.*, 350 F.2d 34 (6th Cir. 1965), *cert. denied*, 383 U.S. 907 (1966), denying such authority, should be resolved?

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves interpretation of certain provisions of the Agricultural Act of 1949, 7 U.S.C. § 1421 *et seq.*, and the Commodity Credit Corporation Act of 1948, 15 U.S.C. § 714 *et seq.* Although both Acts have been amended at various times since 1949, the statutory language pertinent to this case remains unchanged. The statutory provisions particularly involved are 7 U.S.C. §§ 1421, 1425, 1428, and 1441 and 15 U.S.C. § 714j. Pertinent portions of these statutory provisions are set forth in the Appendix at pages A11-A13, *infra*. The regulations challenged in this case are amendments to 7 C.F.R. §§ 1421 and 1425, pertinent portions of which are reproduced in the Appendix at pages A13-A27, *infra*. The parties and the courts below have referred to the loans made under these regulations as "Form G" loans.

STATEMENT OF THE CASE

Petitioner, Hiatt Grain & Feed, Inc., is a small private, noncooperative grain merchant with elevators in two small towns in Kansas. Petitioner was certified in the United States District Court as the representative of a class of several thousand other private, noncooperative grain merchandising firms. Respondent is the Secretary of Agriculture, who on July 14 and August 9, 1977, respectively, promulgated amendments to 7 C.F.R. §§ 1425 and 1421, which permitted cooperative marketing associations to receive from Commodity Credit Corporation nonrecourse, low interest price support loans for wheat and feed grains owned by the cooperatives.

The sole statutory authority for price support loans to farmer-producers on wheat and feed grains is provided by the Agricultural Act of 1949. The use of the Commodity Credit Corporation in making price support loans is based upon the Commodity Credit Corporation Act of 1948. The portions of these statutes pertinent to this litigation have never been changed since their enactment. Between 1949 and August 9, 1977, such loans were only granted to farmer-producers on wheat and feed grains produced on their farms. Although all concerned parties and the lower courts have conceded that cooperatives are not farmer-producers within the meaning of 7 U.S.C. § 1428(b), the challenged regulations treat them as farmer-producers and, in fact, specifically state that, for the purposes of the regulations, the term "producer" shall include an approved cooperative association. 7 C.F.R. § 1421.3(g)

Although the challenge by petitioner and the class in the District Court and in the Tenth Circuit Court of Appeals to the validity of the new regulations involved various grounds, the principal issue presented to this Court

concerns the statutory authority of the Secretary to promulgate the regulations and, in connection therewith, the weight to be given to the Secretary's own interpretation of the scope of his statutory authority. Although one fundamental issue is whether a cooperative, for price support loan purposes, may be treated as a farmer-producer, an intertwined, but distinct issue, is whether such loans to cooperatives may be nonrecourse loans.

The marketing of wheat and feed grains is an intensely competitive business, and profit margin differentials of only one or two cents per bushel are of critical competitive importance. At the time of the trial, petitioner and the class demonstrated that the amended regulations permitted 6% nonrecourse loans to cooperatives while at the same time noncooperative private grain merchants, who were in direct competition with the cooperatives, could only obtain loans in the commercial loan market on a recourse basis at an interest rate in excess of the prime rate (at that time approximately 9%), which is always higher than the government price support loan rate. An additional financial advantage accrues to a borrowing cooperative because no interest at all is payable unless the cooperative redeems the collateral. The cooperative is only obligated to repay the principal of the loan plus interest thereon at the time of such redemption. Thus, borrowing cooperatives have no downside market risk if the price of grain drops below the price support level. In sum, price support loans to cooperatives permit inventory financing at a low interest rate with a floor on the downside risk—a type of financing unavailable to noncooperative private grain merchants.

It is undisputed that the Form G regulations were designed, in particular, to assist cooperatives engaged in "pooling" operations. 7 C.F.R. § 1425.13. Under this

arrangement, prior to planting, a farmer enters into a marketing agreement with a cooperative to commit a specific volume of grain or the yield from specified acreage to a pool handled by the cooperative. Title to the grain passes to the cooperative at the time of harvest. The significance of the Form G loan regulations is illustrated by the pool, called ProMark, designed and used by intervenor Far-Mar-Co, a large regional cooperative, to acquire at the 1977 harvest a pool of approximately forty million bushels of wheat, having a price support loan value to Far-Mar-Co under the regulations of approximately $100 million.

It was conceded in the economic analysis of the Secretary supporting the challenged regulations that "Regional coops are expected to be the primary organization using the new program" and that participation by local unaffiliated coops would be minimal (Joint App. 1171-72). This, of course, ties in with Secretary Bergland's testimony that the primary purpose of the new regulations was to increase the participation of cooperatives in the export trade (*id.* at 962); that the major users of the new loan power would be large regional cooperatives (*id.* at 966); and that it was speculative to say that a local cooperative, unaffiliated with a large regional cooperative, such as Far-Mar-Co, could use the new regulations to penetrate the export market (*id.* at 967-8).

The regulations, as they existed at the time this suit was filed and tried, required a borrowing cooperative to pay over a majority of the loan proceeds to its pooling members, but they did not specify when such payments were to be made. In addition, the regulations permitted the cooperative to retain prepaid storage, handling, and conditioning charges amounting to approximately forty-five cents per bushel. The competitive advantage of the

use of the loan proceeds by the borrowing cooperative prior to any distribution to the pooling members was supported by considerable evidence at the trial, and, undoubtedly as a result of such evidence, the regulations were subsequently amended to require that that part of the loan proceeds payable to the pooling member be paid within a fifteen day period. Thus, the value of the so-called "float" was restricted but not eliminated, and, of course, the control of the pool and all decisions relating thereto still remained vested completely in the borrowing cooperative.

A significant fact, overlooked or ignored by both the Tenth Circuit Court of Appeals and the District Court, is that under the regulations a cooperative may qualify for price support loans despite the fact that the management, as well as the ownership of the pool, rests with the cooperative as an entity and not with the pooling members, who may be and usually are a minority of the membership of the cooperative.

REASONS FOR GRANTING THE WRIT

I

This Case Presents Important Questions Concerning the Extent to Which the Secretary May Disregard the Explicit Language of the Agricultural Act of 1949.

The opinion of the Tenth Circuit Court of Appeals adopting the Secretary's unwarranted construction of the Agricultural Act of 1949 is contrary to the standards set forth in the opinions of this Court requiring reasonable administrative construction by an agency of its statutory authority derived from the language of the statutes.

The initial question is whether 7 U.S.C. § 1441 of the Agricultural Act of 1949 justifies the Secretary's issu-

ance of regulations permitting the CCC to make price support loans to cooperative associations. The portion of 7 U.S.C. § 1441 pertinent to this issue is:

> The Secretary of Agriculture (hereinafter called the "Secretary") is authorized and directed to make available through *loans,* purchases, or other operations, price support *to cooperators* for any crop of any basic agricultural commodity, . . .

(Emphasis added.) The word "cooperator" as used in § 1441 is specifically defined in 7 U.S.C. § 1428(b), which provides in pertinent part:

> A "cooperator" with respect to any basic agricultural commodity shall be a *producer on whose farm the acreage planted* to the commodity does not exceed the farm acreage allotment . . .

(Emphasis added.) In spite of specific language to the contrary contained in 7 C.F.R. § 1421.3(g) of the challenged regulations, the Tenth Circuit stated: "All parties agree that the cooperatives here concerned are not 'cooperators' and are not 'producers' under § 1441." (A4). The opinion is equally clear in agreeing with the Secretary that there are no statutory provisions anywhere specifically authorizing price support loans to cooperatives. Nevertheless, with respect to wheat and feed grains, the Tenth Circuit agreed that the Secretary was justified under the "make available" language of 7 U.S.C. § 1441 in permitting approved cooperative marketing associations to obtain price support loans on "eligible warehouse stored production of such crop of the commodity *on behalf of its members*". 7 C.F.R. § 1421.3(g) (emphasis added).

It is particularly significant to note that the Tenth Circuit specifically conditions its approval of the Secretary's construction of § 1441 and its "make available"

language upon the assumption "that the Secretary will enforce its [sic] regulations which require that majority ownership of the pooling cooperative be 'in active producer members and any bona fide cooperative member'." (A6). The regulations do *not* require that majority ownership, or, indeed, that any substantial percentage of ownership be vested in the members actually participating in the pool.

The Tenth Circuit plainly confused the very real distinction between *pooling* members of an eligible cooperative and *nonpooling* members. The Tenth Circuit unequivocally found that "we do not view the marketing cooperatives as anything but entities separate from their members" (in direct contradiction to the views of the District Court and the Secretary) (A7). However, it failed to consider whether the "make available" language could and should be applied to permit loans not only to noncooperator entities, but also to noncooperator entities where majority ownership is not vested in the members actively engaged in pooling, but rather in nonpooling members. The Tenth Circuit's construction, thus, goes two steps beyond the clear, unambiguous language of § 1441. First, it emasculates the plain requirement that restricts the Secretary to making price support loans available to cooperators (farmers on whose land the crop is grown), which the Court specifically agrees cooperatives are not. Second, having apparently decided that "make available" to "cooperators (farmers)" may be stretched to include cooperatives so long as they are controlled by farmer members, the Court further expands the statutory language by equating all members of cooperatives with pooling members of cooperatives. No one can seriously question that Congress in 1949 through 7 U.S.C. § 1441 only intended that price support loans be made to farmers *upon the grain they produced on their farms.* However, under the regula-

tions a three hundred member cooperative may own and borrow upon, in its sole discretion, a pool of wheat or other feed grains formed by only a small fraction of its members—five, for example.[2] The cooperative owns the grain (A3). The cooperative is an entity separate from its members (A7). The cooperative and the pool and all decisions with respect thereto are, or are subject to being, controlled by the 295 farmer-members who did not participate in the pool (A6-A7). Yet, under the regulations, the cooperative is treated as a "cooperator" within the intent of 7 U.S.C. § 1441 and, presumably, 7 U.S.C. § 1428.

The Tenth Circuit's acceptance of this agency interpretation is particularly difficult to understand in view of its expression of doubt arising from the evidence in the record showing the "many layers of cooperatives . . . between the producer and the marketing of the grain", and its expressed recognition that "it is obvious that the dilution of the individual's position is very, very great" (A6). However, the Court never addressed the more serious dilution of the pooling members' position, arising not necessarily or solely by reason of the "layered" structure of the large regional cooperatives, but by virtue of the pooling members' minority position even in any local, "unlayered" cooperative. Having conceded that there is no express statutory authority for the regulations, when the court says "the dilution is a matter for Congress and not for this Court", it is, in effect, saying that Congress, having

2. This point is illustrated by Far-Mar-Co's ProMark pool. Approximately 250,000 farmers are members of local cooperatives belonging to Far-Mar-Co (Record, XXIII, P. Ex. 32 at 43). In contrast with this large group, 15,241 farmers participated in the 1977 pool (Joint App. 3). Thus, if one gives credence to the theory that farmers control their cooperatives, then a group sixteen times larger than the group of pooling farmers controlled the management of Far-Mar-Co's pool.

already spoken in clear statutory language, has the obligation to correct administrative abuse of that language.

It was conceded at trial that the primary beneficiaries, and the primary intended beneficiaries, of the Form G loan regulations were the large regional cooperatives, such as intervenor Far-Mar-Co. The Secretary's testimony conceded that the purpose of the regulations was to assist the large regional cooperatives to increase their participation in the export market. He acknowledged that participation by local, unaffiliated cooperatives would be minimal. The "layered" structure of regional cooperatives, the purpose of the regulations, and the minimal voice of pooling members must be considered in the necessary analysis of the intent of Congress in 1949 in enacting 7 U.S.C. §§ 1441 and 1428 and the reasonableness of the Secretary's interpretation of his authority.

The Tenth Circuit noted that Form G loans have been made to cooperatives on commodities other than wheat and feed grains. These loans have purportedly been made under statutes other than 7 U.S.C. § 1441. The Tenth Circuit also recognized that there are "obvious differences" in the programs and regulations as to other commodities (A9). However, more significant is its view that these past practices constitute "a significant construction or position as to statutory authority" (A9). This view is unsupported either legally or factually. If, in fact, the Secretary did not have statutory authority to make such loans, the fact of his exceeding his statutory authority could not remedy his lack of statutory authority to make Form G loans on wheat and feed grains. If the Secretary in promulgating the Form G regulations has properly construed his statutory authority, then prior constructions by the Secretary are irrelevant.

In this same context, the Tenth Circuit placed considerable emphasis on the continuous review by Congress of farm policy and the administration of farm programs as demonstrating congressional awareness of the Secretary's practices with respect to loans to cooperatives handling other types of commodities. The weight given to the presumed "congressional awareness" runs directly contrary to the principles laid down by this Court in *TVA v. Hill*, 437 U.S. 153 (1978), and *SEC v. Sloan*, 436 U.S. 103 (1978).[3] Even if congressional awareness were shown, and the record is not clear on this point, the unambiguous language of §§ 1441 and 1428 could not be amended or changed by it.

If Congress in 1949 had wanted to authorize loans to cooperatives, it could easily have done so. It did not. Congress did acknowledge its awareness of cooperatives in the Commodity Credit Corporation Act of 1948, 15 U.S.C. § 714j, in which it permitted the CCC to utilize cooperatives and private trade facilities *as its agents on a fee or contract basis.* There is unanimous agreement that Congress only authorized price support loans to *cooperators.* No one has or can point to any legislative history, relating either to the Commodity Credit Corporation Act of 1948 or the Agricultural Act of 1949, even mentioning the concept of price support loans to cooperatives.

As a peripheral argument, apparently to buttress its doubts with respect to its opinion adopting the Secretary's construction of 7 U.S.C. § 1441, the Tenth Circuit suggested that some support for the Secretary's authority

3. It is interesting to note that in his promulgation of 7 C.F.R. § 1421 the Secretary attempted to buttress his argument concerning congressional awareness by reference to ambiguous language in a 1960 appropriations act. This, of course, was before such administrative reliance was specifically discredited in *TVA v. Hill.*

may be derived from 7 U.S.C. § 1421(a). This section merely states that "the Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him." The Court does not indicate that this point was particularly important to its conclusion, and, in fact, the reference to 7 U.S.C. § 1421(a) is clearly irrelevant. Since the challenged regulations provide for the utilization of CCC as a means of making Form G loans, the "other means" referred to in § 1421(a) are clearly inapplicable.

It is true, as the Tenth Circuit indicated, that there is "some merit" to the Secretary's argument that the loans to cooperatives are on behalf of the producers because some, but not all of the loan proceeds, are required to be passed on to the pooling participants within fifteen days.[4] The Tenth Circuit, having concluded that a cooperative is a separate entity, however, could not base its approval of the Secretary's statutory construction upon this factor.

II

This Case Presents Important Questions Concerning the Relationship of 7 U.S.C. § 1425 to 7 U.S.C. §§ 1441 and 1428(b).

The Secretary's interpretation of his statutory authority and the opinion of the Tenth Circuit affirming that authority completely ignore the impact of 7 U.S.C. § 1425 of the Agricultural Act of 1949 and its interrela-

4. The regulations in existence when this suit was filed contained no specific time restriction for passing on a portion of the loan proceeds to the pooling participants. It is clear that the subsequent change in the regulations was occasioned by this suit and the evidence showing not only the value of the retained portion of the loan proceeds but also the value of the "float" to the cooperatives prior to any passing on.

tionship with 7 U.S.C. §§ 1441 and 1428(b). Section 1425 is specific in providing in pertinent part:

> *No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan* made under authority of this Act unless such loan was obtained through fraudulent representation by the producer. * * *

(Emphasis added.) No one—the Secretary, the District Court, the intervenors, or the Tenth Circuit—has even suggested that § 1425 is in any way ambiguous. Nevertheless, the Secretary has contended, and the lower courts have concurred, that he has statutory authority to make nonrecourse price support loans to cooperatives. Petitioner submits that there can be no meaningful interpretation of the statutory authority claimed by the Secretary under §§ 1441, 1421, and 1428 without considering the interrelationship of these statutory provisions with § 1425. Nowhere—in the regulations, in the briefs of the Secretary and intervenors, in the District Court's opinion, or in the Tenth Circuit's opinion—has there been any mention whatsoever of this interrelationship. Indeed, not only has there been no mention of the impact of § 1425 upon the interpretation of the other statutory sources relating to the Secretary's authority, but there has been a total absence of any discussion whatsoever of § 1425.

The issue of the meaning and effect of § 1425 is not one on which it may be said that the lower courts considered the statutory provision to be ambiguous and gave weight to the Secretary's interpretation of his authority. The Secretary has never attempted to justify under § 1425 his granting of nonrecourse loans to cooperatives. He simply acknowledged in his brief to the Tenth Circuit that the regulations contemplate nonrecourse loans, and the Tenth Circuit in its opinion merely acknowledged

that "the price support loans provided for in the regulations are like other such loans in that the CCC has recourse only against the grain pledged, and has no right of action on the loan against the borrower." (A9).

III

This Case Presents an Important Conflict Between the Tenth and Sixth Circuits Concerning the Construction of 7 U.S.C. § 1425.

The opinion of the Tenth Circuit in permitting nonrecourse price support loans to cooperatives on wheat and feed grains is in direct conflict with the opinion of the Sixth Circuit Court of Appeals in *Tennessee Burley Tobacco Growers' Ass'n v. Commodity Credit Corp.*, 350 F.2d 34 (6th Cir. 1965), *cert. denied*, 383 U.S. 907 (1966), and with the unambiguous language of 7 U.S.C. § 1425.

The explicit language of § 1425 was directly addressed in *Tennessee Burley*, in which the Sixth Circuit, after commenting that "the first question to be determined on this appeal is whether the Association is a 'producer' within the meaning of 7 U.S.C. § 1425", stated:

> *The Association as an entity does not own or operate farms and does not produce tobacco.* It only receives tobacco from the growers that do produce it. *We hold that the term "producer" is used in the statute in its ordinary sense,* and is intended to apply to persons or organizations that grow tobacco, such as the owner of a farm, a tenant on a farm, a sharecropper or similar person. *The term does not encompass an incorporated organization such as the Association* here involved which does not grow crops, but merely receives them from producers for handling.

> *Commodity's utilization of such an Association in the tobacco price support program does not make the Association a "producer" within the meaning of the statute. "Congress in adopting Section 1425 simply intended to absolve producers from personal liability for loan deficiencies* resulting from sales of pledged commodities at price levels lower than the support prices in force at the time the loan was made * * *. Autrey v. Commodity Credit Corporation, 143 F.Supp. 550, 554 (W.D.Ark.). * * *

350 F.2d at 41-42. (Emphasis added.)

Although the Secretary has suggested that in *Tennessee Burley* the Sixth Circuit did not have before it the validity of price support loans to cooperatives, the Secretary has never addressed the clearly expressed holding in *Tennessee Burley* that 7 U.S.C. § 1425 does not contemplate or permit nonrecourse loans to cooperatives. The Tenth Circuit likewise acknowledged its awareness of *Tennessee Burley*, but made no attempt to distinguish the clear holding of the Sixth Circuit that 7 U.S.C. § 1425 does not permit nonrecourse loans to cooperatives.

CONCLUSION

For all the foregoing reasons, petitioner respectfully urges that a writ of certiorari issue to review the judgment of the Court of Appeals for the Tenth Circuit.

Respectfully submitted,

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November, 1979

APPENDIX

OPINION, UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The opinion of the Tenth Circuit Court of Appeals, filed July 16, 1979, and affirming the District Court's judgment, follows:

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

No. 78-1170

HIATT GRAIN & FEED, INC., On Behalf of Itself and All Others Similarly Situated,
Appellant,

v.

ROBERT S. BERGLAND, Secretary of Agriculture, United States of America,
Appellee,

RALPH BALL, et al.,
Intervenors.

Appeal From The United States District Court
For The District of Kansas
(D. C. # 77-4161)

William H. Curtis, of Morrison, Hecker, Curtis, Kuder & Parrish, Kansas City, Missouri (Martin J. Purcell and P. John Owen, Kansas City, Missouri, and John Q. Royce and Tom W. Hampton, of Hampton, Royce, Engleman & Nelson, Salina, Kansas, with him on the Brief), for Appellant.

John F. Cordes, Attorney, Appellate Staff, Civil Division, Department of Justice, Washington, D. C. (Barbara Allen Babcock, Assistant Attorney General, James P. Buchele, United States Attorney, and Ronald R. Glancz, Attorney, Department of Justice, with him on the Brief), for Appellee.

Leonard O. Thomas, of Weeks, Thomas, Lysaught, Bingham & Mustain, Kansas City, Kansas (John A. Price, and Robert L. Gowdy, Kansas City, Missouri, with him on the Brief), for Intervenors.

Before SETH, Chief Judge, DOYLE and LOGAN, Circuit Judges.

SETH, Chief Judge.

This is a class action commenced by Hiatt Grain & Feed, Inc. against the Secretary of Agriculture. The complaint alleges that certain regulations promulgated by the Secretary were without statutory authority. These regulations, as amendments to 7 C.F.R. §§ 1421 and 1425, authorized price support loans to marketing cooperatives on wheat and feed grains.

The trial court found the regulations to be within the authority of the Secretary and to have been adopted in accordance with the required procedure.

The plaintiff has taken this appeal urging that the trial court's conclusion was erroneous.

The challenged amendments to 7 C.F.R. §§ 1421 and 1425 provided expressly that price support loans, Form G loans, could be made to approved cooperative marketing associations on wheat, corn, barley, sorghum, oats, and rye. Previous regulations permitted such loans to cooperatives on many other crops. These crops included rice, dry beans, dry peas, cotton, tobacco, wool, soybeans, and others.

The challenged regulation provides in part that a cooperative marketing association which is approved by the CCC may obtain price support loans on "eligible warehouse stored production of such crop of the commodity on behalf of its members." The regulations provide for loans when the commodity is pooled if it is all eligible for support, and the product is from "eligible" members.

The record shows that the title to the grain in the marketing cooperative's pool or otherwise in its control has passed from the grower to the cooperative, and the cooperative makes all the market decisions. The regulations provide that loan proceeds be remitted to the pool members within fifteen days of receipt. 7 C.F.R. § 1425.14 (a). Before the regulations, growers who placed their wheat in the cooperative's pool were not eligible for price support loans on such grain because title to it had passed to the cooperative.

The price support loans provided for in the regulations are like other such loans in that the CCC has recourse only against the grain pledged, and has no right of action on the loan against the borrower.

As indicated, the fundamental issue on appeal is whether the Secretary had statutory authority to permit the making of price support loans on wheat and feed grains to cooperatives.

The trial court held that the Secretary had such authority. Hiatt Grain & Feed, Inc. v. Bergland, 446 F.Supp. 457 (D.Kan.). The court found an overall statutory authority to use cooperatives in the price support program, and

that the procedure used in the adoption of the regulations was proper.

We need not here describe the CCC loan program nor the grain marketing methods. The facts are described in the opinion of the trial court.

The dispute centers on 7 U.S.C. § 1441, which reads in part:

> "The Secretary of Agriculture (hereinafter called the 'Secretary') is authorized and directed to make available through loans, purchases, or other operations, price support to cooperators for any crop of any basic agricultural commodity, . . ."

7 U.S.C. § 1421 reads in part:

> "(a) The Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him.
>
> "(b) Except as otherwise provided in this Act, the amounts, terms, and conditions of price support operations and the extent to which such operations are carried out, shall be determined or approved by the Secretary. . . ."

The plaintiff urges that 7 U.S.C. § 1441 is the only source of the Secretary's authority and it provides for loans to "cooperators." Further, it argues that a "cooperator" as used in this section means a "producer." 7 U.S.C. § 1428(b). Thus plaintiff's basic position is that the statute provides for loans only to producers. All the parties agree that the cooperatives here concerned are not "cooperators" and are not "producers" under section 1441.

The plaintiff further urges that 15 U.S.C § 713a-13 in its direction to the Secretary to use established

trade cannels and instrumentalities *prohibits* the authorization of loans to cooperatives.

We must agree with the conclusion reached by the trial court, and with much of its analysis.

It is apparent from the many statutory provisions and congressional committee reports over the years that Congress has intended and insisted that cooperatives be encouraged by the Secretary, and be utilized in the implementation of the farm program generally. There is also the direction that the Secretary carry out the price support program through the CCC and "other means," 7 U.S.C. § 1421(a); that the Secretary "make available" through loans or "other operations" price supports to producers, 7 U.S.C. § 1441. The Marketing Act of 1933, 12 U.S.C. § 1141, provides for the encouragement of the organization of producers into cooperatives to assist the marketing of their products. Also, as we have seen, other regulations provide for price support loans, Form G loans, to cooperatives on other farm products.

As quoted above, 7 U.S.C. § 1441 provides in part that the Secretary is "directed" to "make available" price support to "cooperators" (producers). Some significance must be attached to the "make available" language in the statute. It is obviously broader than would be *loans to* cooperators, and it is also provided in the same sentence of the statute that price supports be made available through loans "or other operations." Again "other operations" is much broader than *loans to*. We must consider these elements in the context of the other statutory provisions relating to the use and encouragement of cooperatives, and the general authority of the Secretary in 7 U.S.C. § 1421(a) to use price supports. This construction is not contrary to 15 U.S.C. § 714j, which provides yet additional means and which should not be considered as

exclusive as there is nothing whatever to so indicate. See also "other means" in 7 U.S.C. § 1421(a), by which the Secretary may use price support loans.

The intervenor and the Secretary have advanced the argument that the cooperatives are receiving the loan funds "on behalf" of the producers, as the regulation recites. This, they urge, with the requirement that the loan funds be remitted to the producers within fifteen days (less costs of about 45 cents per bushel) makes the cooperative a conduit for the loan and proceeds. This argument has some merit and relates to the "on behalf" position. However, we are struck by the many layers of cooperatives that the record shows to be placed between the producer and the marketing of the grain. There are cooperatives, such as Farmland, which control other cooperatives as FAR-MAR-CO, which in turn operates for some members its ProMark wheat pool. There are also cooperatives and other members which apparently belong to Farmland or to other cooperatives which belong to Farmland. Thus when we look at the organizations between the individual and the marketing decision, it is obvious that the dilution of the individual's position is very, very great. The wheat pool members are but a portion of the FAR-MAR-CO membership. This is of some concern in this decision insofar as it is based on the direction by Congress to "make available" price supports *to producers*. One must accept in full the theory that each cooperative in each layer is an aggregation of producers (although also a separate entity) as this is what Congress has accepted. The "dilution" is a matter for Congress and not for this court. There is some doubt in our view whether FAR-MAR-CO is really a cooperative in view of its capital structure, but this point is not litigated and we accept the trial court's conclusion. Also we must assume that the Secretary will enforce its regulations which require that major-

ity ownership of the pooling cooperative be "in active producer members and any bona fide cooperative member." Sections 1425.4 and 1425.15. See also as to the source of the pool grain, section 1425.11. With this assumption, the construction of section 1441 adopted by the trial court and the "make available" language by a realistic construction leads to the conclusion that the authorization of loans to cooperatives is within the authority of the Secretary. There is no express authority. The plaintiff in its brief states that the Secretary "essentially admits that there are no statutory provisions . . . anywhere specifically authorizing price support loans to cooperatives." This is so, and we find no specific authority. If there was such, we would not have this litigation.

We do not view the marketing cooperatives as anything but entities separate from their members. They are thus each a business entity recognized by law, but operating by a consensus of its members. The "qualified" cooperatives here concerned are defined in the regulations. 7 C.F.R. §§ 1425.4, 1425.5. In our view the statutes provide authority for the Secretary to direct that price support loans be made to such entities if the structure is approved. See our assumption, expressed above as to "approved" cooperatives. Section 1425.4. This position does not compel a result under 7 U.S.C. § 1441 different from that outlined above. Our construction of section 1441 in the setting of the congressional direction to the Secretary as to cooperatives and as to support payments accommodates the separate entity view coupled with member control. The congressional directions to administrative agencies are in a variety of forms and degrees of specificity. Richards v. United States, 369 U.S. 1; American Trucking Ass'ns, Inc. v. United States, 344 U.S. 298.

We have considered plaintiff's argument based on the directions in 15 U.S.C. § 713a-13 to the Secretary to

use customary marketing machinery, and to encourage cooperative and noncooperative trade channels.

It is obvious that with loans to cooperatives on grain in their pools, they have become a factor in the international marketing of wheat. They so compete, as with their domestic marketing, with the private grain dealers. The plaintiff urges that with the availability of nonrecourse price support loans to cooperatives, the private dealers will be placed at a great disadvantage as to the cost of money. The record demonstrates that under some circumstances, the price support loans may provide some advantage in this respect to the cooperatives over the private dealers. However, we find nothing in 15 U.S.C. § 713a-13 which would prohibit such loans as urged by the plaintiff, nor would the competitive impact be a violation of plaintiff's constitutional rights as it urges. We have considered in this context the interest rates available to private dealers and to the cooperatives as well as the recourse and nonrecourse aspects. 7 U.S.C. § 1425.

We have mentioned at the outset the price support loans to cooperatives on farm products other than wheat and feed grains. As also mentioned, the regulations here challenged were an amendment to add wheat and feed grains to such group of products. The authority of the Secretary as to the original group of farm products is basically the same as for wheat, although there are some differences, and some arrangements have agency aspects with fees. Under these circumstances it is reasonable to consider, despite some variations, the regulations as to other products as a construction of the Secretary's statutory authority. Thus to consider the many authorities relating to statutory construction by a governmental agency, we have not made a complete list of these other products, but they include cotton in 1949 (13 Fed.Reg. 4338, an agency arrangement), peanuts in 1953 (13 Fed.Reg.

3778), rice in 1948 (13 Fed.Reg. 5109), soybeans in 1961 (26 Fed.Reg. 7317), all without rulemaking procedure. We mention again the "other means" language in section 1441, that is other than loans, to mean the use of other instrumentalities in the mechanics of loans to producers, but also, and more importantly, by usage to permit loans *to* cooperatives. We understand these are Form G loans for the most part of the type here considered for wheat.

We have considered the variations in the programs and regulations as to other products well described in plaintiff's brief (pp. 37-42). There are obvious differences, but considering them all, and the basic policy in authorizing the loans to such cooperatives, we still must view them as a significant construction or position as to statutory authority. The consistent and continuous review by Congress of farm policy and the administration of farm programs is sufficient to demonstrate an awareness by Congress of the practice as to these very important commodities over the extended period of time.

This court on many occasions has considered the weight to be given the construction of statutes by the administrative body charged with carrying out the directives in the Act. These cases include Save Our Invaluable Land (Soil), Inc. v. Needham, 542 F.2d 539 (10th Cir.); American Petroleum Institute v. E.P.A., 540 F.2d 1023 (10th Cir.); United States v. State of New Mexico, 536 F.2d 1324 (10th Cir.); and Lincoln Bank & Trust Co. v. Exchange Nat'l Bank, 383 F.2d 694 (10th Cir.). In *United States v. State of New Mexico,* we said: "When considering a statute the courts may give great weight to the interpretation placed on the statute by those charged with its administration. (Citing Zemel v. Rusk, 381 U.S. 1, and Udall v. Tallman, 380 U.S. 1)." We thus have a clear interpretation demonstrated by parallel programs, and this is sufficient.

Again in view of the continuous review of farm policy and the administration of the farm programs, the references in the record to congressional committee hearings is a sufficient demonstration of the awareness of Congress as to the support loan program for cooperatives, and the interpretation by the Secretary.

We have carefully considered Tennessee Burley Tobacco Growers Ass'n v. Commodity Credit Corp., 350 F.2d 34 (6th Cir.), cited by the plaintiff; also Tennessee Valley Authority v. Hill, 437 U.S. 153; and Securities & Exchange Comm'n v. Sloan, 436 U.S. 103. *SEC v. Sloan* is a very significant case and is another demonstrating that administrative interpretation may be wrong, and must be set aside. The courts are the final authority on issues of statutory construction. Federal Trade Comm'n v. Colgate-Palmolive Co., 380 U.S. 374. This is why the administration interpretation is "persuasive" or "entitled to weight." It is, of course, never conclusive as the Court reminds us in *SEC v. Sloan.* Considering these admonitions we again must give the interpretation weight; we find it consistent with a reasonable interpretation, not inconsistent with a statutory mandate, and does not frustrate congressional policy underlying the statute.

The plaintiff has also challenged the procedure followed in the adoption of the regulation here considered. We find no defects in the procedure. The record demonstrates a reasoned decision after consideration of all relative factors. There was a detailed economic analysis, an impact statement, and the rulemaking procedure under the Administrative Procedure Act was followed. There were some five thousand comments submitted, and the record shows that these were examined by the Department and their analysis was considered by the Secretary.

AFFIRMED.

STATUTORY PROVISIONS INVOLVED

The pertinent portions of the statutes involved in this case are:

7 U.S.C. § 1421(a)

(a) The Secretary shall provide the price support authorized or required herein through the Commodity Credit Corporation and other means available to him.

7 U.S.C. § 1425

No producer shall be personally liable for any deficiency arising from the sale of the collateral securing any loan made under authority of this Act unless such loan was obtained through fraudulent representations by the producer. This provision shall not, however, be construed to prevent the Commodity Credit Corporation or the Secretary from requiring producers to assume liability for deficiencies in the grade, quality, or quantity of commodities stored on the farm or delivered by them, for failure properly to care for and preserve commodities, or for failure or refusal to deliver commodities in accordance with the requirements of the program. There is authorized to be included in the terms and conditions of any such nonrecourse loan a provision whereby on and after the maturity of the loan or any extension thereof Commodity Credit Corporation shall have the right to acquire title to the unredeemed collateral without obligation to pay for any market value which such collateral may have in excess of the loan indebtedness.

7 U.S.C. § 1428(b)

(b) A "cooperator" with respect to any basic agricultural commodity shall be a producer on whose farm

the acreage planted to the commodity does not exceed the farm acreage allotment for the commodity under subchapter II of chapter 35 of this title, or in the case of price support for corn or wheat to a producer outside the commercial corn-producing or wheat-producing area, a producer who complies with conditions of eligibility prescribed by the Secretary: *Provided,* That for upland cotton a cooperator shall be a producer on whose farm the acreage planted to such cotton does not exceed the cooperator percentage, which shall be in the case of the 1966 crop, 87.5 per centum of such farm acreage allotment and, in the case of each of the 1967 through 1970 crops, such percentage, not less than 87.5 or more than 100 per centum, of such farm acreage allotment as the Secretary may specify for such crop, except that in the case of small farms (i. e. farms on which the acreage allotment is 10 acres or less, or on which the projected farm yield times the acreage allotment is 3,600 pounds or less, and the acreage allotment has not been reduced under section 1344(m) of this title) the acreage of cotton on the farm shall not be required to be reduced below the farm acreage allotment: *And provided,* That for the 1971 through 1977 crops of upland cotton a cooperator shall be a producer on a farm on which a farm base acreage allotment has been established who has set aside the acreage required under section 1444(e) of this title. For the purpose of this subsection, a producer shall not be deemed to have exceeded his farm acreage allotment unless such producer knowingly exceeded such allotment: *Provided further,* That for the 1976 and 1977 crops of rice, a cooperator shall be a person who produces rice on a farm for which a farm acreage allotment has been established or to which a producer acreage allotment has been allocated and, if a set-aside is in effect, who has set aside any acreage required under section 1441(g) of this title.

7 U.S.C. § 1441

The Secretary of Agriculture (hereinafter called the "Secretary") is authorized and directed to make available through loans, purchases, or other operations, price support to cooperators for any crop of any basic agricultural commodity, if producers have not disapproved marketing quotas for such crop, at a level not in excess of 90 per centum of the parity price of the commodity nor less than the level provided in subsections (a) to (c) of this section as follows:

* * *

15 U.S.C. § 714j

The Corporation may, in the conduct of its business, utilize on a contract or fee basis, committees or associations of producers, producer-owned and producer-controlled cooperative associations, and trade facilities.

CHALLENGED REGULATIONS

The regulations challenged in this case are:

7 C.F.R. § 1421.3(g), as amended August 9, 1977

(g) *Approved cooperative.* A cooperative marketing association which is approved by the Executive Vice President, CCC, or his designee, pursuant to Part 1425 of this chapter, to obtain price support on a crop of barley, corn, oats, rice, rye, sorghum, soybeans and wheat may obtain price support on the eligible warehouse stored production of such crop of the commodity on behalf of its members. When used in this subpart and on applicable forms, the term "producer" means both an eligible producer as defined in paragraphs (a), (b), and (c) of this section and an approved cooperative association.

7 C.F.R. § 1425, as amended July 14, 1977

§ 1425.1 Applicability.

This subpart and any amendments thereto set forth the terms and conditions which a cooperative marketing association (hereinafter called "cooperative") must meet to obtain price support on behalf of its members for 1977 and any succeeding crop of a commodity. A cooperative meeting such terms and conditions may obtain price support on any crop of a commodity for which a price support program is in effect if regulations issued with respect to such program incorporate the provisions of this subpart or permit a cooperative which meets the provisions of this subpart to participate in the price support program for a crop of such commodity.

* * *

§ 1425.3 Application.

(a) *Initial approval.* A cooperative which desires approval to obtain price support on any authorized 1977 and succeeding crop of a commodity shall submit an application for a determination of eligibility with respect to each of the commodities listed herein for which approval is sought. An application form and related questionnaire and a copy of the regulations appearing in this subpart may be obtained from the Director, Grains, Oilseeds and Cotton Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Inquiries relating to such documents should also be addressed to the Director, Grains, Oilseeds and Cotton Division. The cooperative shall forward its application and required information to the Director, Grains, Oilseeds and Cotton Division. Applications with respect to each of the commodities listed herein and supporting material shall be submitted on or before the

applicable date listed below of the calendar year in which the cooperative requests approval to participate in the price support program for commodities marketed thereafter, or by such later date as the Executive Vice President, CCC, may authorize to alleviate hardship.

Commodity	*Date*
Cotton	August 1.
Honey	July 1.
Rice	August 1.
Soybeans	September 1.

If price support program regulations for a commodity not listed herein require a cooperative to obtain approval under this subpart to be eligible for price support, the latest date for filing an application for approval with respect to such commodity shall be specified in such program regulations.

(b) *Information confidential.* Information submitted in connection with an application relative to trade secrets or financial or commercial operations or dealing with the financial condition of an applicant cooperative for initial approval for [sic] continued approval shall be kept confidential by the officers and employees of CCC and the Department of Agriculture except to the extent CCC determines such disclosure is necessary for the conduct of the price support program, and shall not be released where prohibited by law or regulation.

(c) *Approved cooperatives.* A cooperative shall be considered as an "approved cooperative" for the purposes of this paragraph (c), if:

(1) It is unconditionally approved to participate in a price support program with respect to the 1977 or any subsequent crop of a commodity; or

(2) It is conditionally approved to participate in a price support program with respect to the 1977 or any subsequent crop of a commodity and has satisfied the conditions of approval.

(d) *Term of approval.* A cooperative approved to participate in a 1977-crop price support program may participate in the price support program for such commodity until its approval is suspended by the Executive Vice President, CCC, or his designee, or terminated by the Executive Vice President, CCC.

(e) *Annual information.* Annually, an approved cooperative shall furnish, when requested by the Director, Grains, Oilseeds and Cotton Division:

(1) An audit report to include any accompanying notes, schedules or exhibits, certified by a certified public accountant as fairly representing the financial condition of the cooperative.

(2) A statement showing the total capital interest in the cooperative owned by active members and member cooperatives and the total capital interest in the cooperative owned by inactive and nonmembers by each separate category.

(3) The names of any active producer members and member cooperatives who own in excess of 10 percent of the capital of the cooperative and the amount owned by each.

(4) The quantity of each commodity delivered to the cooperative for marketing and the portion thereof that was received from active members.

(5) The quantity of each commodity tendered to CCC for loan and the quantity redeemed.

(6) The quantity of each commodity tendered to CCC for purchase.

(f) *Current information.* An approved cooperative shall furnish to the Director, Grains, Oilseeds and Cotton Division, immediately:

(1) Any changes in its articles of incorporation, bylaws, resolutions, or marketing agreement.

(2) Any changes in officers, directors, or principal employees and conflict of interest statements in accordance with § 1425.8(d).

(3) Any change in pooling operations with an explanation of the change and why such change was necessary.

(4) Additional information as may be requested at any time in connection with its continued approval under this subpart.

(g) *Suspension.* A cooperative may be suspended by CCC from further participation in the price support program if it is determined that it has not operated in accordance with representations made in its application for approval, has not complied with the regulation, or has failed to bring into compliance deficiencies noted during an administrative review or an audit of its operations under a price support program. Such suspension may be lifted upon receipt of documents indicating that the cooperative complies with the provision of this subpart which served as the basis of the suspension.

(h) *Termination.* CCC shall have the right at any time, by giving the cooperative at least five days written notice, to terminate the right of the cooperative to tender commodities to CCC for loan and to mature all outstanding loans by making demand for payment by the date specified

in such notice, which shall not be earlier than 10 days after such termination date. If the cooperative has loans outstanding, such loans shall be redeemed not later than such maturity date or title to the commodity shall, without a sale thereof, vest in CCC, and CCC shall have no obligation to pay for any market value the commodity may have in excess of the amount of the loans, plus interest and charges.

(i) *Voluntary termination.* An approved cooperative may at any time, upon written notice to CCC, voluntarily terminate its approval to participate in a price support program: *Provided,* That the cooperative does not have any outstanding loans at the time of voluntary termination.

§ 1425.4 Ownership and control.

The cooperative shall be owned and controlled by its active producer members and any bona fide cooperative members (hereinafter called "member cooperative").

(a) *Ownership.* The cooperative must establish that its active producer members and its member cooperatives which are owned and controlled by their active producer members, own a capital interest in the cooperative (i.e., stock, revolving fund certificates, book credits, or other equity interest) constituting more than 50 percent of the capital of the cooperative. Ownership of a member cooperative by its active members shall also be determined in accordance with the provisions of this paragraph (a). In determining the requisite capital interest of active producer members and member cooperatives, the following shall be disregarded:

(1) The capital interest of any such member in excess of 10 percent of the capital of the cooperative; and

(2) The capital interest acquired by any such member as a result of a loan unless such member is obligated to repay the loan within a reasonable period of time.

(b) *Control.* The organization and operation of the cooperative shall be under the control of its active producer members and member cooperatives which are owned and controlled by their active producer members. A cooperative shall be considered so controlled if more than 50 percent of its membership consists of active producer members, or member cooperatives which are owned and controlled by their active producer members.

(1) A director shall be an active member, a representative of an active member serving in the capacity of a farm manager or its equivalent (including an officer of a corporation and a partner in partnership), or an officer or employee of a member cooperative which is owned and controlled by its active members.

(2) A director shall be nominated and elected by active members except when selected to fill the unexpired term of a director so elected.

(c) *Approved plan.* Notwithstanding the foregoing provisions of this section, a cooperative which presently has a plan approved by CCC for retiring equities owned by inactive members may continue operating under the approved plan even though active members do not control or own more than 50 percent of the capital interest of the cooperative. If an applicant cooperative or an approved cooperative is determined not to be under the control, or ownership, or both, of its active members the cooperative may be approved to participate in the price support program if the cooperative submits, and the Executive Vice President, CCC, approves a plan for retiring the capital interest of its inactive members so that such

ownership and control will be invested to its active members within a reasonable period of time. Nevertheless, ownership and control of such a cooperative must be invested in its members and member cooperatives.

* * *

§ 1425.9 Uniform marketing agreement.

Any quantity of a commodity on which price support is obtained and any other quantity of such commodity which is included in the same pool with a quantity of the commodity on which price support is obtained, must be delivered to the cooperative by its members pursuant to a uniform marketing agreement between the cooperative and each of its members who delivered such commodity to the cooperative. A cooperative may provide alternative methods of marketing in addition to any set forth in its marketing agreement if the terms and conditions thereof are reasonable and information concerning such methods of marketing and how to exercise available options are made available to all active members. Such information may be published in the cooperative's membership publication or included in other written notices mailed to all active members of the cooperative.

§ 1425.10 Purchased and nonmember commodity.

Any commodity purchased from members who do not retain the right to share in the proceeds from marketing of such commodity as provided in §§ 1425.13 and 1425.14 and any commodity acquired from nonmembers is not eligible for price support.

§ 1425.11 Member business.

If price support is sought for a particular crop of a commodity, not less than 80 percent of such crop of

the commodity that is acquired by or delivered to the cooperative for marketing must be produced by its members or by members of its member cooperatives. However, the Executive Vice President, CCC, may, for a period of two years or such lesser period of time as he determines appropriate, authorize a cooperative applying for initial approval to acquire or receive for marketing from its members a smaller quantity of such crop than 80 percent, if that quantity has a value greater than the value of the quantity acquired or received from nonmembers for marketing and if the cooperative establishes that to the satisfaction of the Executive Vice President, CCC, that such authorization is necessary for the efficient operation of the cooperative and is in the best interest of the members of the cooperative. Purchases of commodities by a cooperative from CCC shall not be considered in determining the volume of member and nonmember business.

§ 1425.12 Vested authority.

The cooperative shall have authority to obtain a loan on the security of the commodity delivered to it by its members, to give a lien on such commodity, and to sell such commodity.

§ 1425.13 Eligible commodity and pooling.

(a) *Commingled commodity.* The cooperative may obtain price support on a quantity of commodity stored commingled in approved warehouses not to exceed the smaller of (1) the quantity of commodity eligible for price support received from eligible members, or (2) the quantity of such commodity remaining undisposed of in the pool eligible for price support: *Provided,* That the cooperative at all times shall have a quantity of such commodity in inventory of each class and grade at least equal to

the quantity of that commodity of each class and grade under loan.

(b) *Identity preserved.* The cooperative may obtain price support only on the eligible commodity received from eligible members which remains undisposed of in its inventory at the time such commodity is offered as security for a loan or is offered for purchase, when such commodity is stored identity preserved in approved warehouses.

(c) *Pools.* The cooperative may establish separate pools as needed for quantities of a commodity acquired from members. If the cooperative obtains price support from CCC on any quantity of commodity included in a pool, all of the commodity included in such pool must be eligible for price support, except that a part of a pooled commodity may be ineligible for price support because of grade or quality, or, in the case of cotton, bale weight or being repacked.

(d) *Commodity requirements.* Whether pooled or not, the commodity offered for price support must:

(1) Have been produced by an eligible producer on a farm on which the production of such commodity is eligible for price support under the applicable price support program regulations;

(2) Meet the eligibility requirements for making price support available to the cooperative under applicable price support program regulations; and

(3) Have been delivered to the cooperative for marketing for the benefit of producer members or by member cooperatives in behalf of their producer members.

(e) *Allocation of costs and expenses.* If price support is obtained on any quantity of a crop of a commodity, allocations of costs and expenses among separate pools

for the crop of the commodity shall be made in accordance with sound accounting principles and practices.

(f) *Assessing losses.* Any losses incurred by the cooperative in marketing a commodity on which price support is not obtained from CCC shall not be assessed against the proceeds of marketing of a commodity on which support was obtained.

(g) *Exception.* CCC may approve an exception to the foregoing requirements upon written request by a cooperative if the Executive Vice President, CCC, or his designee determines that the approval of such request will result in equitable treatment of members and is in accord with the purposes of the price support program.

§ 1425.14 Distribution of proceeds.

(a) *Loan advances.* If price support is obtained from CCC on any part of the commodity in a pool, the loan proceeds shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member less any authorized charges for services performed by and/or paid for by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for loan.

(b) *Pool distribution.* If price support is obtained from CCC on any part of the commodity in a pool, the proceeds of such pool shall be distributed only to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member which is included in such pool. Proceeds from an eligible pool, on which price support has been obtained, shall not be combined with proceeds from ineligible pools for distribution and final settlement. The cooperative shall submit with its application a detailed description of the method

by which proceeds from a pool on which price support is obtained will be distributed. The method of distribution shall be as provided in the marketing agreement with members or in the bylaws.

(c) *Unclaimed funds.* A cooperative which has attempted to distribute a part of its capital interest (as defined in § 1425.4(a)) in accordance with its articles of incorporation and bylaws to producer members described in paragraph (b) of this section and has given notice of such distribution both by publication and personal letter addressed to such members, may provide for reallocation of such undistributed capital interest, to the extent permitted by the law of the State applicable to such distribution, to its members and patrons on an equitable basis if:

(1) The period of limitation for the payment of debts has run commencing on the date the capital interest was declared to be payable by the cooperative;

(2) The cooperative, prior to the lapse of such period of limitation, has given the affected member a 30-day notice of the expiration of such period of the amount payable to him by certified mail, return receipts requested, at the member's last known address as reflected on the books of the cooperative; and

(3) No claim for payment of such capital interest is made within the period of limitations described above.

§ 1425.15 Member cooperatives.

(a) *Obtains price support.* If a cooperative obtains price support from CCC on any quantity of a commodity delivered by a member cooperative or if the cooperative obtains price support from CCC on any quantity of the commodity included in the same pool with the production

delivered by such member cooperative, the cooperative and such member cooperative must meet the requirements of paragraphs (a) (1), (2) and (3) of this section.

(1) The commodity delivered by the member cooperative must have been produced by its members; and the member cooperative must have authority to deliver such commodity to the cooperative for marketing. Also, each such member cooperative must have authority to sell the commodity produced and delivered to such member cooperative by its members, obtain a loan on the security thereof, and give a lien thereon.

(2) In its charter, bylaws, marketing agreement, or by other legal means, the cooperative must require each such member cooperative to meet the requirements of this subpart.

(3) The cooperative must determine that each such member cooperative is eligible for price support under this subpart and must so certify to CCC.

(b) *Comply with State law.* The cooperative shall determine and certify to CCC that its member cooperatives which are not subject to paragraph (a) of this section comply with the producer ownership, membership meeting and voting requirements of applicable State law.

(c) *Exception.* Notwithstanding the foregoing provisions of this section, an approved cooperative is required to meet only the provisions contained in the first sentence of paragraph (a) (1) of this section with respect to a member cooperative for whom it markets the production of its producer members under § 1425.7.

* * *

§ 1425.21 Definitions.

(a) *Person.* As used in this subpart the term "person" shall have the meaning of such terms as defined in the regulations pertaining to Reconstitution of Farms and Allotment, Part 719 of this title and any amendments thereto.

(b) *Active member.* The term "active member" shall mean a member of a cooperative who has utilized the services offered by a cooperative for marketing his commodity or purchasing production supplies for his farming operation in one of the three preceding crop years or such shorter period as may be provided in the cooperative's articles of incorporation or bylaws.

7 C.F.R. § 1425.3, as amended August 9, 1977

1. The table appearing in paragraph (a) of § 1425.3 which contains a list of commodities and final dates for submission by cooperatives marketing associations of applications for approval to participate in authorized price support programs on behalf of their members is revised to read as follows:

§ 1425.3 Application.

(a) * * *

Commodity:	*Date*
Barley	June 1.[1]
Corn	Oct. 1.[1]
Cotton	Aug. 1.
Honey	July 1.[1]
Oats	June 1.[1]
Rice	Aug. 1.
Rye	June 1.[1]
Sorghum	Oct. 1.
Soybeans	Sept. 1.
Wheat	June 1.[1]

* * * * *

7 C.F.R. § 1425.14(a), as amended February 3, 1978

(a) *CCC loans and purchases.* If price support is obtained on any part of the commodity in a pool through CCC loans or purchases, the proceeds therefrom shall be distributed to members participating in such pool on the basis of the quantity and quality of the commodity delivered by each member less any authorized charges for services performed by and/or paid for by the cooperative which are necessary to condition the commodity or otherwise make the commodity eligible for price support. Such proceeds shall be distributed within a period of 15 days from the date of receipt from CCC. However, if the cooperative has distributed initial advances to members in the eligible pool at the time it acquires the commodity and which advances equal not less than such proceeds less authorized charges, a further distribution shall not be required.

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1. Cooperatives submitting applications for approval to participate in 1977 crop price support programs must do so by Oct. 1, 1977.